

**REMARKS**

Claims 16-17, 19-25, 70, 72-79, 83-96, 100-104, 108-112, 114-120, 122-124 and 126-129 are pending and have been allowed. Claims 41, 43, 45-47, 49-54, 64, 66, and 69 have been rejected. Claim 47 has been amended. Claims 16-17, 19-25, 41, 43, 45-47, 49-54, 64, 66, 68-70, 72-79, 83-96, 100-104, 108-112, 114-120, 122-124, and 126-129 remain pending in this application.

**§ 112 Rejection**

Claims 47 and 49-54 have been rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards (or Applicants regard) as the invention. In making this rejection, the Examiner raises the following question: “if all of the ‘stationary portion’ is held in contact with the seal ridge how can there be a ‘portion of the stationary portion’ now not in contact with the seal ridge but rather ‘in alignment with the seal surface’?” Applicants have amended the claim to state that “the stationary portion of the flexible flap being held in a stationary position *with a first portion thereof* in contact with a portion of the seal ridge ... [and] a *second* portion of the stationary portion resides in non-alignment with the seal surface.(italics added)” This amendment should overcome the outstanding rejection since the claim now states that a first portion of the stationary portion is in contact with the seal ridge and a second portion is in non-alignment with it.

**§ 251 Rejection**

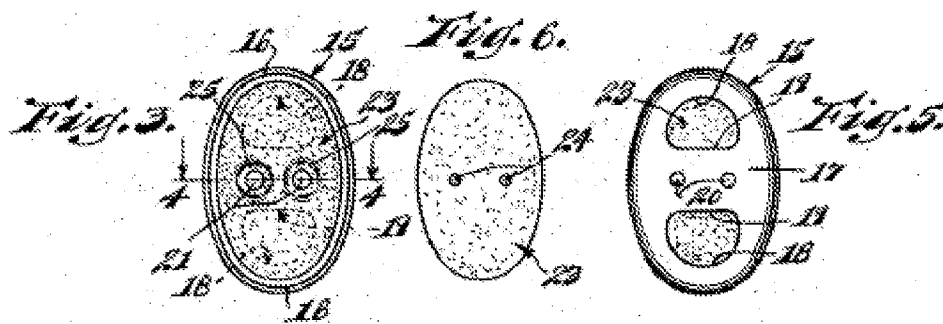
Applicant has amended claim 47 to delete the language “at least” from line 22. Thus this issue should be eliminated.

**§ 102 Rejection**

Claims 41, 43, 46, 64, 66 and 69 have been rejected under 35 USC § 102(b) for being anticipated by US Patent 2, 105, 183 to Cover. In maintaining this rejection, the Examiner states that “Cover ... actually forms two valves” and that “it is not improper to interpret Cover as essentially having two separate valves.” Cover does not show two valves: it shows one valve that

has one flap with two free portions. The Examiner, however, contends that it is proper interpret Cover has having two separate valves. This position is not in accord with patent laws.<sup>1</sup> If Examiners were allowed to interpret references to disclose something that the references did not disclose, then it would be impossible for applicants to amend the claims to distinguish over the prior art. Applicant has distinguished cantilevered valves from the centrally mounted valves like Cover.<sup>2</sup> Not only has applicant explained the differences between these two types of valves, but the present claims explicitly set forth these differences. Applicant's claims 41 and 64 require that the valve have "only one flexible flap" that has "only one free end" and that the flap is "non-centrally mounted." Claim 41 also includes a stationary end and an opposing free end and indicates that the flap is "non-centrally mounted". And claim 64 requires a root end and has the flap mounted in cantilever fashion.

Cover does not have a stationary end opposite the free end or a root end. In Cover, there is no stationary end. Cover is mounted centrally, and therefore is stationary in the center — not at a stationary end. Being mounted in the center, the flap is not mounted in cantilever fashion. The Examiner contends that Cover's valve does have only one flexible flap. In taking this position, the Examiner conceptually cuts the Cover flap in half and states that each half constitutes a flap. Such an interpretation of Cover, however, is, in no way, reflective of its actual disclosure. As shown below, Cover shows one flexible flap 23:



<sup>1</sup> See *Graham v. John Deere Co.* 383 U.S. 1, 148 USPQ 459 (1966) (An evaluation of the scope and content of the prior art requires an accurate *factual* assessment of what the art actually discloses.).

<sup>2</sup> See applicant's specification at the Background section.

This flap is described by Cover as a “movable valve element 23”. It has “a pair of apertures 24 adapted to register with pins 20” on a carrying frame 15. The “pins are adapted to act as hinges for the movable valve element 23.”<sup>3</sup> Thus, the movable valve element or flap 23 bends about its central mounting point at the pins 20 to provide two free ends that lift from the carrying frame. Cover is not showing only one flap that has only one free end and that is non-centrally mounted.

The Examiner cannot take a reference and read into the reference subject matter that is not there.<sup>4</sup> Thus, it is not proper to conceptually cut the Cover valve in half and say that there are two separate valves. Cover is only describing one valve, and Cover’s one valve has one centrally-mounted flap with two free portions -- not a cantilevered flap with one free end. To state otherwise is to misinterpret the scope and content of Cover. This type of reference interpretation of course is not proper under 35 USC § 102(b). For these reasons, claims 41, 43, 46, 64, 66, and 69 are not anticipated under the meaning of 35 USC § 102(b) by Cover.

### **§ 103 Rejections**

Claims 45 and 68 are rejected under 35 USC § 103(a) as being unpatentable over Cover in view of Baldwin (US Patent 5,295,478). Because Cover is not being interpreted properly, this rejection too cannot be properly maintained.

Respectfully submitted,

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<sup>3</sup> See U.S. Patent 2,105,183 to Cover at page 1, second column, lines 36-55.

<sup>4</sup> *In re Lundsford*, 148 USPQ 721, 725 (CCPA 1966) (“As a matter of law ... the examiner must substantiate his ‘suspicions’ on the basis of facts drawn from proper prior art. The issue to be resolved requires more than ‘suspicions’; it requires facts.”)